Chevron U.S.A., Inc. *and* Sailors' Union of the Pacific, AFL–CIO. Case 20–CA–23743

September 30, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

The central issue in this case is whether the launch captains are supervisors and did the Respondent violate Section 8(a)(5) of the Act by withdrawing recognition from the Union with respect to a unit of launch captains.

On May 5, 1992, Administrative Law Judge Jerrold H. Shapiro issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Chevron U.S.A., Inc., Richmond, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Lucile L. Rosen, Esq., for the General Counsel.
Curtis L. Mack, Esq. and *Michael G. Canaras, Esq. (Mack & Bernstein)*, for the Respondent.
Jeffrey R. Walsh, Esq. (Henning, Walsh & King), for the Charging Party.

DECISION

STATEMENT OF THE CASE

JERROLD H. SHAPIRO, Administrative Law Judge. This proceeding, in which I conducted a hearing on February 3-4, 1992, is based on an unfair labor practice charge filed by Sailors' Union of the Pacific, AFL–CIO (the Union), on November 30, 1990, and on a complaint issued on February 28, 1991, on behalf of the General Counsel of the National Labor Relations Board (the Board), by the Regional Director for Region 20 of the National Labor Relations Board, alleging that Chevron U.S.A., Inc. (Respondent)[1] has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act).

The complaint, in substance, alleges that the Union is the exclusive collective-bargaining representative of a bargaining unit comprised of all launch captains employed by Respondent on Respondent's inland vessels operating in San Francisco Bay and its tributaries, and that prior to November 27, 1990, the Respondent recognized the Union as the exclusive representative of the launch captains employed by Respondent in this unit, and, in violation of Section 8(a)(1) and (5) of the Act, on November 27, 1990, Respondent withdrew recognition from, and refused to bargain with, the Union as the exclusive representative of the aforesaid unit of launch captains. Respondent filed an answer denying the commission of the alleged unfair labor practices.[2]

On the entire record, from my observation of the demeanor of the witnesses, and having considered the posthearing briefs submitted by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Respondent's Withdrawal of Recognition from the Union and Its Setting*

The workers involved in this case are employed by Respondent as launch captains aboard the tugs *Standard No. 4* and *Richmond Chevron* which are berthed in Richmond, California at the Richmond Long Wharf, located on San Francisco Bay. These tugboats are the only so-called inland vessels being operated by Respondent on San Francisco Bay and its tributaries.

The *Chevron Richmond* is a ship-assist tug which began operating sometime in 1989. It replaced Respondent's tug, *Standard No. 2*, which performed the identical ship-assist service as the *Chevron Richmond*. The *Chevron Richmond* assists pilots of incoming or outgoing vessels in docking and undocking the vessels at the Richmond Long Wharf, by pushing and pulling the vessels pursuant to the pilots' directions. The pilots are also known as mooring masters.

The *Standard No. 4* primarily pushes Respondent's barge, the *Chevron Oiler*. Occasionally it does ship-assist work, like the *Chevron Richmond*, but most of the time the *Standard No. 4* pushes the *Chevron Oiler* from the Richmond Long Wharf to and from bunkering jobs on the San Francisco Bay. The *Chevron Oiler* loads or unloads fuel oil, with the *Standard No. 4* standing by until the oil is loaded or unloaded.

The *Chevron Richmond* and *Standard No. 4* each employ a crew of three: a launch captain; a utilityman; and a deckhand. The launch captains are licensed by the United States Coast Guard and the utilitymen and deckhands are unlicensed.

[1] The name was amended at the hearing.

[2] In its answer to the complaint, Respondent admits it is an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act and meets the Board's applicable discretionary jurisdictional standard, and also admits that the Union is a labor organization within the meaning of Sec. 2(5) of the Act.

Respondent regularly employed six launch captains, who, like the other crewmembers, are normally assigned on a regular basis to either the *Standard No. 4* or the *Chevron Richmond*. However, some of the launch captains have been employed as launch captains on both the *Standard No. 4* and the *Chevron Richmond*.

During all times material, the unlicensed crew—the utilitymen and deckhands—on the *Standard No. 4* and the *Chevron Richmond*, and its predecessor the *Standard No. 2*, have been represented by the Union and covered by a collective-bargaining agreement between Respondent and the Union.

Respondent and the Union were parties to a collective-bargaining agreement titled, ''Agreement between [Union and Respondent] applying to Launch Captains employed on Inland Vessels Operating in San Francisco Bay and Tributaries,'' which, by its terms, was effective from December 1, 1985, through November 30, 1988. Section 1 of the agreement, states that ''[Respondent] agrees to recognize the [Union] as the representative for the purpose of collective bargaining for the Launch Captains employed on the Inland Vessels operating in San Francisco Bay and tributaries.'' The terms of the agreement, herein referred to for the sake of convenience as the December 1, 1985–November 30, 1990 agreement, were extended by the parties to November 30, 1990.

The parties at the start of the hearing stipulated (Tr. p. 9, L. 19 through p. 10, L. 9), that from the mid-1950s until the Respondent's withdrawal of recognition on November 27, 1990, infra, that the launch captains employed on *Standard No. 4* and the *Chevron Richmond*, and its predecessor *Standard No. 2*, were a part of a collective-bargaining unit that was represented by the Union and that the Union was recognized during that period by Respondent as the exclusive representative of the launch captains. In addition, the Union's President, Gunnar Lundeberg, testified that until November 27, 1990, when Respondent withdrew recognition from the Union as the representative of the launch captains, Lundeberg dealt with Respondent's representatives on behalf of the launch captains employed on both the *Chevron Richmond* and the *Standard No. 4*, without objection by Respondent. Lundeberg further testified that the terms of the December 1, 1985–November 30, 1990 agreement were applied by Respondent to the launch captains employed by Respondent on both the *Chevron Richmond* and the *Standard No. 4*. Lundeberg's aforesaid testimony was undenied.

I considered the record evidence which indicates that the International Organization of Masters, Mates and Pilots, Inc., AFL–CIO, Branch No. 40 of San Francisco (MMP), represented the one person employed by Respondent in 1988 as launch captain on the *Standard No. 2*. However, based on the language of Respondent's December 1, 1985–November 30, 1990 agreement with the Union, and the above-described stipulation of the parties, and the above-described undenied testimony of Lundeberg, I find that during the time material to this case and, in particular, immediately prior to Respondent's November 27, 1990 withdrawal of recognition, that Respondent recognized the Union as the exclusive representative of the launch captains it employed on the *Chevron Richmond* and the *Standard No. 4* and understood that its December 1, 1985–November 30, 1990 agreement with the Union applied to the launch captains employed on both of those tugboats.[3] I further find that all of the launch captains employed by Respondent on inland vessels operating on San Francisco Bay and tributaries, excluding supervisors as defined in the Act, constitute an appropriate bargaining unit.

As found supra, Respondent's December 1, 1985–November 30, 1990 agreement with the Union covering the launch captains was scheduled to expire on November 30, 1990. On September 28, 1990, Respondent, by letter, notified the Union of its intent to terminate the agreement. The Union responded by requesting that Respondent commence negotiations for a new agreement and asked Respondent to contact it, so a bargaining session could be scheduled. Subsequently, a meeting was scheduled for November 27, 1990, at Respondent's offices.

Present for the Union at the November 27, 1990 meeting were Union President Lundeberg and Business Agent Kaj Kristensen. Present for Respondent were the following: Dave Powell, manager of ports and navigation; Captain Maurizo Croce, manager of United States ports; and, Al Starosciak, manager of human resources.

During the meeting Lundeberg was handed a letter dated November 27, 1990, signed by T. R. Moore, Respondent's vice president and general manager of operations, which reads as follows:

> This refers to our letter of September 28, 1990 notifying you of our intent to terminate the labor agreement covering Launch Captains, and your letters of September 28 and November 8, 1990 indicating your willingness to engage in collective bargaining for a new agreement.
>
> Launch Captains, assigned to the Tug *Standard No. 4* operating in San Francisco Bay and Tributaries, are supervisors. In view of this, the Company will no longer recognize the Sailors' Union of the Pacific (AFL–CIO) as representatives of these employees, and we intend to terminate the agreement effective November 30, 1990; thus, there is no reason to engage in collective bargaining.
>
> If you have any questions or wish to discuss the subject further, please contact Mr. D. T. Powell at 894–5580.

Lundeberg read the letter and, in response to the letter's second paragraph, it is undisputed that he stated it was the position of the Union that it represented all of the launch captains employed by Respondent in the San Francisco Bay.[4] Powell and Starosciak informed Lundeberg, ''it was a matter of corporate philosophy'' that the launch captains were supervisors.

---

[3] It is for the above reason that I reject Respondent's contention that during the time material Respondent did not recognize the Union as the exclusive representative of the launch captains employed on the *Chevron Richmond* and that those launch captains were not covered by the December 1, 1985–November 30, 1990 agreement.

[4] I considered that this statement was not included in the description of the November 27 meeting contained in the affidavit Lundeberg submitted to the Board during its investigation of the Union's charge filed in this case. However, Lundeberg's testimonial demeanor was good when he gave this testimony and his testimony was not denied.

On either November 29, 1990, or in December 1990, at the request of the Union, the Respondent's representatives met with Union President Lundeberg at the offices of the Federal Mediation and Conciliation Service (FMCS). Present for the FMCS was Commissioner Ruth Carpenter, for the Union just Lundeberg, and for the Respondent the same persons as were present at the November 27 meeting: Powell, Croce, and Starosciak. Lundeberg, for the General Counsel, and only Croce, for the Respondent, testified about what occurred during this meeting.

Lundeberg's testimony of the relevant portions of this meeting, follows: Commissioner Carpenter read out loud Section 2(11) of the Act, and asked if Respondent's launch captains exercised any of the authority set forth therein; Respondent's representatives answered in the negative; Commissioner Carpenter asked Respondent's representatives to explain the basis for Respondent's position that the launch captains were supervisors; they replied the launch captains wrote employees' evaluations and requisitioned supplies; Commissioner Carpenter stated that in her opinion the launch captains were working foremen; Respondent's representatives stated that they disagreed; and, Commissioner Carpenter suggested that the parties seek the assistance of the Board to clarify the supervisory issue.

Croce's testimony of the relevant portions of this meeting follows: Croce responded to Commissioner Carpenter's inquiry, whether the launch captains had any of the authority set forth in Section 2(11) of the Act, by stating they possessed the authority to direct and to assign work to employees and to discipline employees and possessed the authority to recommend that employees be hired, fired, promoted, demoted, transferred, and rewarded. Croce explained to the Commissioner, with respect to the aforesaid recommendations, that ''upper management has the review process and ultimately it is a team effort that decides what the fate of an individual is going to be.'' Croce, and the other company officials, told the Commissioner that Respondent had always considered employees with the title ''captain'' as supervisors, whether they were employed on tugboats or tankers and Respondent believed the responsibility of captains employed on Respondent's tugboats was the same as the other captains in its employ and that traditionally the launch captains had always been considered to be supervisors.

I reject Croce's testimony about this meeting, insofar as it conflicts with Lundeberg's testimony, because Lundeberg's testimonial demeanor—his tone of voice and the way he looked and acted while he was on the witness stand—was good. In addition, Respondent's unexplained failure to call either its Manager of Ports and Navigation Powell or its Manager of Human Resources Starosciak to corroborate Croce's testimony, warrants the inference that if called they would have testified adversely to Respondent concerning the conflict between Croce's and Lundeberg's testimony as to what transpired at the meeting with Commissioner Carpenter. *International Automated Machines*, 285 NLRB 1122, 1122–1123 (1987).

B. *The Question Presented*

The question presented is whether the launch captains employed by Respondent on the *Chevron Richmond* and the *Standard No. 4* are supervisors within the meaning of Section 2(11) of the Act, thereby excusing Respondent's refusal to continue to recognize, and bargain with, the Union as their exclusive collective-bargaining representative.

C. *Applicable Principles*

Section 2(11) of the Act reads:

> The term ''supervisor'' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Although this language lists the supervisory powers in the disjunctive—so that the exercise of any one of them is sufficient to make an individual a supervisor—it also contains the conjunctive requirement that the power be exercised with ''independent judgment,'' rather than in a ''routine'' or ''clerical'' fashion. *Walla Walla Union-Bulletin v. NLRB*, 631 F.2d 609, 613 (9th Cir. 1980); *NLRB v. Pilot Freight Carriers*, 558 F.2d 205, 207 (4th Cir. 1976). Nor will the existence of ''independent judgment'' alone suffice; for ''the decisive question is whether [the individual involved has] been found to possess authority to use [his or her] 'independent judgment' with respect to the exercise [by him or her] of some one or more of the specific authorities listed in Section 2(11) of the Act.'' *NLRB v. Browne & Sharpe Mfg. Co*., 169 F.2d 331, 334 (1st Cir. 1948). And, although the existence of any of the Section 2(11) powers, ''regardless of the frequency of its exercise is sufficient,'' the ''failure to exercise [supervisory powers] may show the authority does not exist.'' *Laborers Local 341 v. NLRB*, 564 F.2d 834, 847 (9th Cir. 1977). In this regard, isolated and infrequent incidents of supervision do not elevate a rank-and-file employee to a supervisory level. *NLRB v. Doctors' Hospital of Modesto*, 489 F.2d 772, 776 (9th Cir. 1973); *Westinghouse Electric Corp. v. NLRB*, 424 F.2d 1151, 1158 (7th Cir. 1970); *Highland Superstores v. NLRB*, 927 F.2d 918, 922 (6th Cir. 1991); *NLRB v. Res-Care*, 705 F.2d 1461, 1467 (7th Cir. 1983); and *NLRB v. St. Francis Hospital of Lynwood*, 601 F.2d 404, 421 (9th Cir. 1979). Similarly, an employee does not become a supervisor if his or her participation in personnel actions is limited to a reporting function and there is no showing that it amounts to an effective recommendation that will effect employees' job status. *Ohio Masonic Home*, 295 NLRB 390, 393 (1989); see also *Beverly Enterprises v. NLRB*, 661 F.2d 1095, 1100–1101 (6th Cir. 1981); *NLRB v. St. Francis Hospital of Lynwood*, 601 F.2d 404, 421 (9th Cir. 1979); *NLRB v. City Yellow Cab Co*., 344 F.2d 575, 581 (6th Cir. 1965).

In determining whether persons are statutory supervisors, ''[j]ob titles are unimportant.'' *Laborers Local 341 v. NLRB*, supra. Accord: *Walla Walla Union-Bulletin v. NLRB*, supra (''[T]he specific job title of the employees is not controlling.''); *Arizona Public Service Co. v. NLRB*, 453 F.2d 228, 231 fn. 6 (9th Cir. 1971) (The job title is ''irrelevant''). Whether an employee is a supervisor is to be determined in light of the employee's *actual* authority, responsibility, and relationship to management. *Phillips v. Kennedy*, 542 F.2d

52, 55 (8th Cir. 1976). Thus, the Act requires ''evidence of actual supervisory authority visibly translated into tangible examples demonstrating the existence of such authority.'' *Oil Workers v. NLRB*, 445 F.2d 237, 243 (D.C. Cir. 1971). Although ''[a] supervisor may have potential powers, . . . theoretical or paper power will not suffice. Tables of organization and job descriptions do not vest powers.'' Id. at 243, quoting *NLRB v. Security Guard Service*, 384 F.2d 143, 149 (5th Cir. 1967). Accord: *St. Alphonsus Hospital*, 261 NLRB 620, 630–631 (1982). Additionally, the evidence must ''fairly'' show that ''that the alleged supervisor knew of his authority to exercise'' the supervisory power. *NLRB v. Tio Pepe, Inc*., 629 F.2d 964, 969 (4th Cir. 1980).

Finally, the Board in interpreting Section 2(11) has been instructed that it must not ''construe supervisory status too broadly, for a worker who is deemed to be a supervisor loses his organizational rights.'' *McDonnell Douglas Corp. v. NLRB*, 655 F.2d 932, 936 (9th Cir. 1981); *Williamson Piggly Wiggley v. NLRB*, 827 F.2d 1098, 1100 (6th Cir. 1987); *Westinghouse Electric Corp. v. NLRB*, 424 F.2d 1151, 1158 (7th Cir. 1970). Consistent with its duty to avoid an unduly broad construction of supervisory status, the Board has placed the burden of proving that an individual is a supervisor on the party alleging that supervisory status exists. *Health Care Corp*., 306 NLRB 63 fn. 1 (1992), and cases cited. See also *George C. Foss Co. v. NLRB*, 752 F.2d 1407, 1410 (9th Cir. 1985); *Walla Walla Union-Bulletin v. NLRB*, 631 F.2d 609, 613 (9th Cir. 1980). Also, it is settled that in establishing that individuals possess Section 2(11) supervisory authority, that conclusionary statements, without supporting evidence, are not sufficient to establish supervisory authority. *Sears, Roebuck & Co*., 304 NLRB 193 (1991).

D. *The Supervisory Status of the Launch Captains*

As I have found supra, the *Chevron Richmond* and the *Standard No. 4* each employs a crew of three: a launch captain; a utilityman; and a deckhand. The *Chevron Richmond*'s crew is on duty for 24 hours and off for the next 48 hours. The *Standard No. 4*'s crew is on duty for 7 consecutive days, 24 hours a day, and off for the next 7 days.

Respondent regularly employs six launch captains for the *Standard No. 4* and *Chevron Richmond*: Tynan; Devine; Chandler; Gill; Russell; and Cody. The supervisory authority of the launch captains, which is in dispute in this case, is the same regardless of whether they are assigned to the *Chevron Richmond* or the *Standard No. 4*.

The port superintendent of the Richmond Long Wharf, Dennis Arnett, whose office is at the Richmond Long Wharf, oversees the work of the launch captains. The port superintendent reports to Captain Maurizo Croce, manager for all of the Respondent's ship operations in the United States' ports. Although Port Superintendent Arnett is responsible for the work of the launch captains, it is Arnett's staff—Area Operation Coordinator Modugno and Vessel Operation Coordinators Torres and Hoffman, whose offices are at the Richmond Long Wharf—who immediately supervise the launch captains. However, it is undisputed that the launch captains employed on both the *Standard No. 4* and the *Chevron Richmond* are not evaluated by the port superintendent or his staff, but by Captain Steward Quan, the Respondent's pilot, who pilots Respondent's ships in and out of the Richmond Long Wharf. In addition, to his piloting duties, it is undisputed that Captain Quan, ''makes inspections [of the *Standard No. 4* and *Chevron Richmond*] quarterly at least . . . [a]nd makes recommendations and judgments about the safety of the equipment and everything . . . [a]nd then gives these inspection forms to the office.''

The *Chevron Richmond* and *Standard No. 4* are berthed at the Richmond Long Wharf and perform their assigned tasks in the immediate vicinity of that port. When they are not in port their launch captains maintain contact with the Respondent's shore-based supervisors—the area operation coordinator and the vessel operation coordinators—by means of both cellular telephones and radio-telephone. After regular office hours (8 a.m. to 5 p.m.) one of the vessel operation coordinators is always on call 24 hours daily to receive calls from the launch captains and, for nonroutine matters, the area operation coordinator is also available after normal business hours to receive calls from the launch captains.

The vessel operation coordinators and/or the area operation coordinator (collectively called operation coordinators), give the launch captains, on a daily basis, the *Chevron Richmond*'s and *Standard No. 4*'s job assignments. Likewise, the launch captains have no discretion over who shall be assigned to the *Chevron Richmond* or *Standard No. 4* as crewmembers or as utilitymen or deckhands, because these work assignments are made by the operation coordinators.

If a crewmember assigned to the *Chevron Richmond* or *Standard No. 4* is absent from work or unable to work due to sickness or injury, the launch captain notifies the operation coordinators who decide who shall replace the absent or indisposed crewmember, and it is also the operation coordinators who schedule the crewmembers' vacations and independently decide whether to grant crewmembers'requests for time off from work.

The daily work of the launch captains consists primarily of navigating their assigned tugboat to and from its assigned work tasks and to maintain logs which detail the movements and work performed by the tugboat and the hours worked by the crewmembers. Also, on a regular basis, the launch captains assist the crewmembers in performing the various kinds of maintenance work, such as washing down and painting the tugboats.

Since all of the crewmembers regularly assigned to the *Chevron Richmond* and the *Standard No. 4* are long-term experienced employees, who know what their job assignments are and how to perform them, the work of the crewmembers is normally done without any direction from the launch captains. Since the crewmembers know what has to be done and how to do it without instruction, Launch Captain Chandler testified that only approximately 5 percent of his worktime is spent giving directions to the crew.

Respondent presented no evidence whatsoever to establish that the launch captains possess the authority to hire, suspend, lay off, recall, discharge or discipline other employees, or to adjust their grievances, or effectively to recommend such action.[5] Moreover, the undenied testimony of the three

[5] Respondent's assertion in its posthearing brief that Captain Croce, Respondent's manager of United States ports, testified the launch captains have the authority to recommend the hiring and firing of crewmembers is not accurate. He testified this is what he told Commissioner Carpenter of the FMCS. As discussed supra, I have rejected that testimony. Moreover, Croce did not testify he told Commissioner Carpenter that those recommendations were effective

launch captains who testified in this proceeding—Launch Captains Chandler, Gill, and Tynan—establishes that they do not exercise any of these powers.

Having found Respondent failed to establish that the launch captains possess the authority to hire, suspend, lay off, recall, discharge, or discipline other employees, or to adjust their grievances, or effectively to recommend such action, what is left for consideration is whether they possess any of the remaining authority set forth in Section 2(11) of the Act; whether they possess the authority to transfer, promote, assign, reward, or responsibly to direct other employees, or effectively to recommend such action, ''if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.''

1. Respondent's contention that the launch captains possess the authority to effectively recommend transfers

There is no contention or evidence that the launch captains possess the authority to transfer crewmembers. Respondent contends, however, they have the authority to effectively recommend the transfer of crewmembers. In support of this, Respondent states that the evidence shows Launch Captain Russell effectively recommended the transfer of crewmembers Doug Ahuna and Ronald Kram. I am of the opinion that the evidence fails to establish that Launch Captain Russell effectively recommended Ahuna's transfer and, in the case of Kram's transfer, even if the record establishes his transfer was effectively recommended by Russell, it does not establish that the launch captains possessed the authority to effectively recommend the transfer of crewmembers, because it was an isolated occurrence. I therefore find that Respondent has failed to establish that the launch captains possess the authority to effectively recommend transfers.

Respondent's contention that Ahuna was transferred from the position of utilityman to that of a deckhand is based on the following. On April 13, 1990, Launch Captain Russell submitted to management his written performance appraisal of Ahuna. In the section of the appraisal entitled, ''Promotability (indicate your evaluation of the employee),'' Russell checked the space, ''properly placed,'' and immediately below, in the space reserved for ''comments/suggestions,'' wrote the following comment: ''Mr. Ahuna request(s) that he be moved to the position of deckhand when another man is trained as utility.'' Fred Modugno, Respondent's area operation coordinator, testified when Modugno assumed his position in August 1990, Ahuna was employed as a deckhand. No evidence was presented as to the date on which Ahuna was transferred, or the name of the person or persons who decided to transfer him, or the circumstances of that decision.

Respondent's contention that Ahuna was transferred from the position of utilityman to deckhand because his April 1990 performance evaluation submitted to management by Launch Captain Russell contained such a recommendation lacks merit because Respondent failed to present evidence that its decision to transfer Ahuna was the result (in whole or even in part) of a recommendation made by Russell in Ahuna's performance evaluation. Respondent's failure to present such evidence is not surprising because in Ahuna's performance evaluation Launch Captain Russell did not recommend that he be transferred from his current job of utilityman. Quite the opposite, the evaluation indicates Russell thought Ahuna was doing a very good job as a utilityman and was ''properly placed'' in that position and further indicates that it was Ahuna, *not Russell*, who requested that management move Ahuna to the position of deckhand. Subsequently, in moving Ahuna from his utilityman position, Respondent's management obviously disagreed with Russell's conclusion that Ahuna was ''properly placed'' in that position. It is for these reasons that I find Respondent failed to establish that Launch Captain Russell effectively recommended Ahuna's transfer.

Respondent's contention that Launch Captain Russell effectively recommended the transfer of Kram is based on the testimony of Area Operation Coordinator Modugno that on an undisclosed date in 1991, Russell, who at the time was assigned to *Standard No. 4*, informed Modugno that one of the crewmembers, Ronald Kram, was not fully cross-trained and needed further training. Modugno further testified that ''upon [Russell's] recommendation, we assigned Kram back to the *Chevron Richmond*.''

Counsel for Respondent asks that I interpret the above testimony as a recommendation by Captain Russell to Modugno that Kram be transferred to the *Chevron Richmond* for the purposes of training, whereas Counsel for the General Counsel asks me to interpret it as meaning that Captain Russell said nothing about Kram being transferred but merely suggested that he needed further training. In my opinion Modugno's testimony is ambiguous in that respect; it could be reasonably interpreted either way. In any event, assuming that Launch Captain Russell did on this occasion recommend Kram be transferred to the *Chevron Richmond* for further training and that Modugno accepted his recommendation, it is insufficient to establish that the launch captains possess the authority to effectively recommend that crewmembers be transferred, inasmuch as a single instance in which a recommendation for transfer was made is not sufficient to confer supervisory status as a matter of law. Here there is no other record evidence that launch captains have either transferred or recommended that crewmembers be transferred. Under the circumstances, Respondent has failed to establish that the launch captains possess the authority to transfer or to effectively recommend the transfer of crewmembers.

2. Respondent's contention that the launch captains possess the authority to effectively recommend rewards

There is no contention that the launch captains possess the authority to reward crewmembers. Respondent, however, urges they have the authority to effectively recommend rewards. This contention is based in part on the performance

---

recommendations. Quite the opposite, he testified that in saying this to Commissioner Carpenter he explained to Carpenter that ''upper management has the review process and ultimately it is a team effort that decides what the fate of an individual is going to be.'' In any event, as I have noted previously, the law is settled that conclusionary statements made by witnesses in their testimony, without supporting evidence, does not establish supervisory authority. Here no supporting evidence was presented by Respondent, and the testimony of the three launch captains who testified in this proceeding was to the effect that their advice has never been sought in connection with the hiring or firing of crewmembers.

evaluations of crewmembers' work submitted to management by the launch captains and in part on the fact that crewmembers Jim Adkins and Ted Stevens were granted a financial award for their work performance after Launch Captain Russell called their outstanding work performance on a specific maintenance project to the attention of management and expressed the hope that they would receive recognition for their dedication and hard work.

Respondent's contention that the performance evaluations establish that the launch captains possess the authority to effectively recommend rewards is considered infra, and for the reasons set forth infra, lacks merit. Respondent's further contention that its treatment of crewmembers Adkins and Stevens establishes that the launch captains possess the authority to effectively recommend rewards, lacks merit because: (1) it is an isolated occurrence; and (2) pursuant to Respondent's written policy, all crewmembers are encouraged to bring outstanding work performances to the attention of management, so that management may reward those performances.

Respondent maintains a written policy that any employee in its employ may recommend to management that fellow employees receive awards for an outstanding work performance.

On April 17, 1991, Launch Captain Russell wrote Port Superintendent Arnett stating he observed two of the utilitymen employed on *Standard No. 4*, Adkins and Stevens, performing beyond the scope of their normal job duties on a particular maintenance project. Russell in this letter expressed the ''hope'' that Port Superintendent Arnett ''will make certain that they [Adkins and Stevens] receive the recognition they deserve for their dedication and hard work.''

This letter was referred to Area Operation Coordinator Modugno, who, discussed the matter with Operation Coordinator Torres, but did not discuss the matter with Russell.[6] Modugno then prepared a memo, which was signed by Arnett, and sent to Arnett's supervisor, Captain Croce, the manager of Respondent's United States ports. The memo, in substance, described the outstanding manner in which utilitymen Adkins and Stevens performed on the maintenance project and noted that Launch Captain Russell had submitted a request that they be given a ''Team award'' for their work performance on the project and stated that Arnett, Modugno, and Torres recommended that Adkins and Stevens be awarded the sums of $500 each and that Captain Russell and Jim McGee, the other crewmembers involved in the maintenance project, be awarded $400 each for their work performance.

Modugno testified the decision to give some kind of an award to Adkins and Stevens was based on Russell's April 17, 1991 letter to Arnett and further testified it was Arnett, Modugno, and Torres who decided on the form of the award and who decided the award should be extended to cover the other members of the crew involved in the project, namely, Russell and McGee.

[6] Modugno and Torres were familiar with the maintenance project involved inasmuch as they had made all of the arrangements for the project. Torres, in particular, was very familiar with the work which had been done by the crewmembers on that project, inasmuch as Torres was responsible for having provided the trucks, manpower, and equipment used on the project. As Modugno testified, Torres, ''was involved with the captain and the crew throughout the cleaning [referring to the maintenance project].''

Subsequently, Adkins, Stevens, Russell, and McGee were awarded sums of money as a result of the above-described recommendation.

There is no evidence that crewmembers on any other occasions received a financial award as the result of a request made by a launch captain, or, as the result of a request made by a launch captain, a crewmember's employment status was favorably effected because of his or her job performance. In other words, assuming that Respondent's management treated Launch Captain Russell's letter of April 17, 1991, as an effective recommendation,[7] it is insufficient to establish that the launch captains possess the authority to effectively recommend awards, because a single instance in which such a recommendation is made and accepted is not sufficient to confer supervisory status as a matter of law, especially where, as here, all of Respondent's employees have been encouraged by management to submit recommendations of the type made by Russell and there is no evidence that management placed any more reliance on Russell's recommendation than it would have placed on a similar recommendation made by a crewmember.

3. Respondent's contention that the launch captains, by virtue of evaluating other employees' work performances, possess the authority to effectively recommend that employees be promoted, rewarded, or disciplined[8]

Respondent urges that the performance evaluations of the unlicensed crewmembers submitted to management by the launch captains establish that the launch captains possess the authority to effectively recommend that crewmembers be promoted, rewarded and disciplined. The evidence pertinent to this argument and its evaluation is set forth below.

The unlicensed crewmembers (utilitymen and deckhands) employed on the *Standard No. 4* and the *Chevron Richmond* are supposed to be evaluated in writing by the launch captains annually, but in practice they are evaluated every 18 or 20 months and sometimes at even longer intervals.

The format of the evaluations may be briefly described as follows. The first section of the evaluation is entitled, ''General Appraisal and Report'' and consists of several traits including, ''Professional Knowledge,'' ''Personal Behavior,'' ''Industry,'' ''Initiative,'' ''Judgment,'' ''Decision Making,'' ''Adaptability,'' and ''Leadership.'' For each of these traits, the evaluator must rate the person being evaluated as either ''outstanding,'' ''very good,'' ''good,'' ''fair,'' ''unsatisfactory,'' or ''not observed,'' and must explain any unsatisfactory or outstanding traits observed and indicate specific areas for improvement. The next section of the evaluation is titled

[7] There is a suggestion in the record that management independently evaluated Launch Captain Russell's expressed ''hope'' that Adkins and Stevens be recognized by Respondent for their hard work, inasmuch as, after considering the matter, Operation Coordinators Modugno and Torres decided that all of the members of the crew who worked on the maintenance project involved, Russell and McGee as well as Adkins and Stevens, should be rewarded for the outstanding manner in which the maintenance project was completed.

[8] As I have found supra, there is no contention or evidence that the launch captains possess the authority to reward employees. Likewise, there is no contention or evidence that they possess they authority to promote or discipline employees.

''Desireability'' and asks the evaluator to ''indicate [his or her] attitude toward having this employee under your command.'' The final section asks for the evaluator's opinion about the ''promotability'' of the employee being evaluated; whether the employee is ''Ready for promotion,'' or is ''Promotable with further experience and/or license upgrading,'' or is ''Properly placed,'' or is ''Improperly Placed-Not able to fill present job.'' The evaluator is also asked to state on the evaluation how long the employee being evaluated has been ''supervised'' by the evaluator.

The launch captain discusses the evaluation with the crewmember being evaluated, and after the evaluation has been signed by both the launch captain and the crewmember, the launch captain transmits it to the office of the port superintendent where it is reviewed by the area operation coordinator and the port superintendent. The port superintendent acknowledges that he has reviewed the evaluation by signing it. In addition, each evaluation is reviewed by the port superintendent's superior, the Respondent's manager of United States ports. The evaluations, after having been reviewed by the aforesaid persons, are placed in the crewmembers' personnel files.

Although the launch captains have been submitting the above-described written evaluations to management for several years, no evidence was presented showing that a single crewmember's job status or terms or conditions of employment has ever been effected by a launch captain's evaluation. In so concluding, I considered Respondent's contention that launch captains' recommendations contained in evaluations resulted in the promotion of crew member Claude Chandler and in crew member Harold Presswood being trained for the position of utilityman. I also considered Respondent's further contention that the record establishes that crewmembers are never promoted over a launch captain's objection. These contentions lack merit for the reasons below.

Claude Chandler in 1986 was employed as a utilityman on *Standard No. 2* (*Chevron Richmond*'s predecessor). On October 15, 1986, he was evaluated by the ''mate/pilot'' of *Standard No. 2*, who checked the section of the evaluation which stated that the person being evaluated was ''Promotable with further experience and/or license upgrading,'' and wrote the following comment: ''Charlie has his mates license and with training should be able to handle the mates job.'' The evaluation shows it was reviewed by the port superintendent on January 12, 1987. It is undisputed that approximately 6 months later Chandler was promoted to the position of launch captain. However, no evidence whatsoever was presented to establish that in deciding to promote Chandler, management relied on the above evaluation, without conducting its own independent investigation of the relevant circumstances.[9] As I have previously indicated, the law is settled that although an individual is empowered to recommend that other employees be promoted or rewarded or disciplined, this authority is insufficient to satisfy the statutory standard for supervisors unless their superiors are prepared to implement these recommendations without an independent investigation of the relevant circumstances. *Waverly-Cedar Falls Center v. NLRB*, 933 F.2d 626 (8th Cir. 1991), citing *Passavant Health Center*, 284 NLRB 887, 891 (1987). See also *Beverly Manor Convalescent Center*, 275 NLRB 943, 945–946 (1985).

In his April 13, 1990 evaluation of deckhand Presswood, Launch Captain Russell informed management that ''Presswood is presently learning the basics of the utilityman's position. When time permits, I believe that he should be fully trained as a utility.'' Subsequently, on June 15, 1990, Russell transmitted a note to the area operation coordinator stating, ''this is to inform you that Harold Presswood is qualified at the position of Utilityman on board the *Chevron Richmond*.'' The record is silent as to whether or not Presswood was transferred to the position of utilityman. Respondent apparently takes the position that it decided to fully train Presswood as a utilityman as a result of the statement in Russell's April 13, 1990 evaluation of Presswood. However, as was the case of Chandler's promotion, there is no evidence whatsoever that management relied upon the evaluation without conducting its own independent investigation of the relevant circumstances.

Respondent's contention that crewmembers are never promoted over a launch captain's objection is based on the testimony of Captain Croce, Respondent's United States port manager. He testified ''no,'' when asked by Respondent's Counsel: ''Are crewmembers ever promoted over the captain's objection?'' In view of the leading nature of the question and because Croce's conclusionary testimony was completely lacking in details and specifics, it is insufficient to establish supervisory authority. *Sears, Roebuck & Co.*, 304 NLRB 193, supra. Moreover, the unreliability of Croce's testimony is demonstrated by his further testimony that he was unable to identify a single crewmember whose employment status has been affected by either promotion, demotion, reward, or otherwise because of a launch captain's evaluation. This despite the fact that he has been reviewing these evaluations for the past several years.

I considered that the launch captains in evaluating the crewmembers, as required by the evaluation forms, state whether or not they ''desire'' to continue to have the person being evaluated work under their supervision and whether or not they feel the person is ready for promotion or is promotable or is not able to fill his present position. However, these ''recommendations,'' by themselves, are insufficient to satisfy the statutory standard for supervisors unless Respondent's management is prepared to implement the recommendations without an independent investigation of the relevant circumstances. *Waverly-Cedar Falls Center*, supra; *Passavant Health Center*, supra; and *Beverly Manor Convalescent Center*, supra. Here Respondent failed to present any evidence as to what weight, if any, it gives to the launch captains' evaluations in determining whether to promote, demote, discipline, or reward employees. Absent evidence that the evaluations constitute effective recommendations, they do not establish supervisory authority. *Valley Mart Supermarkets*, 264 NLRB 156, 161 (1982); *Beverly Enterprises v. NLRB*, supra.

Besides the lack of evidence as to what weight, if any, Respondent gives to the evaluations submitted by the launch captains, in determining whether to promote, demote, reward, or discipline, the record contains evidence which indicates that before acting upon a launch captain's evaluation, Re-

[9] I also note there are indications in the record that the job duties and responsibilities of the ''mate/pilot,'' the title of the person who in 1986 evaluated Chandler, differed from that of the current launch captains, thus it may not follow that the current launch captains possess the same supervisory authority possessed by the ''mate/pilots'' in Respondent's employ in 1986.

spondent conducts an independent evaluation and investigation. Thus, when Area Operation Coordinator Modugno was asked, ''Who ultimately will be the one that makes the decision as to whether someone will be rewarded or punished,'' he testified, ''there would be I would say more than the one person—it is a group thing.'' He also testified that based upon his employment experience with the Respondent that the following would occur before Respondent acted on a launch captain's evaluation: ''we would have a meeting with the Port Superintendent and myself and the captain involved in the evaluation to decide what are we going to do with the specific employee.'' In addition, as I have set forth supra, when Respondent's manager of United States ports, Captain Croce, was questioned by FMCS Commissioner Carpenter about the supervisory authority of the launch captains, Croce testified he told Carpenter that while the launch captains had the authority to recommend that crewmembers be hired, fired, promoted, transferred, and rewarded, that ''upper management has the review process and ultimately it is a team effort that decides what the fate of an individual is going to be.''

It is for the above reasons that I find Respondent failed to establish that the recommendations set forth in the performance evaluations submitted to Respondent's management by the launch captains amount to effective recommendations that will effect employees' job status. Accordingly, I reject Respondent's contention that the evaluations establish that the launch captains possess the authority to effectively recommend that crewmembers be promoted, rewarded, or disciplined.

4. Respondent's contention that the launch captains possess the authority to assign and responsibly direct other employees and that such authority is not of a merely routine or clerical nature, but requires the use of independent judgment

The operation coordinators, whose offices are located at the Richmond Long Wharf, where the *Chevron Richmond* and *Standard No. 4* are berthed, give the launch captains the daily work assignments for the *Chevron Richmond* and *Standard No. 4*. Likewise, the launch captains have no discretion over who is assigned as crewmembers to these tugboats nor do they assign the crewmembers to their positions, because the job assignments (utilityman and deckhand assignments) are also made by the operation coordinators.

It is also undisputed that the crewmembers employed on the *Chevron Richmond* and the *Standard No. 4* are regularly assigned to those tugboats and are ''long-term'' employees of the Respondent (Tr. p. 311, LL. l–2), who know what their work assignments are and how to perform them without direction or instruction and, as a result of this, the work of the crewmembers is normally performed without any assignment, direction or instruction by the launch captains. Since the crewmembers know what has to be done, when to do it and how to do it, the launch captains spend only approximately 5 percent of their worktime directing or assigning work to the crews.[10] I shall now set forth and evaluate the evidence concerning those infrequent occasions when launch captain either assign or direct the work of crewmembers.

A launch captain directs the utilityman to start and turn off the tug's engine in connection with the launch captain's navigation of the tug.

Launch Captain Gill, who, when he testified had been a launch captain aboard the *Chevron Richmond* for approximately 20 months, testified that when one of his crewmembers is absent due to illness or for other reasons, that occasionally the relief worker temporarily assigned to replace the absentee will be inexperienced and because of this Gill has to exercise ''more hands on supervision than usual''; that is, Gill has to sit down with the inexperienced relief worker and explain his job duties. Respondent presented no testimony, other than Gill's above-described testimony, on this subject, thus there is no showing that this occurs—the employment of an inexperienced crewmember—on more than isolated and sporadic occasions.

Launch Captain Gill testified he has the authority to direct the crewmembers in their work, but testified that normally the crew knows what they have to do without any direction from him and that he only occasionally tells them to do ''this or that'' and they obey him. More specifically, in this regard, Gill testified that during the approximately 20 months he has been employed as a launch captain, that only on a ''couple of occasions'' when he observed crewmembers had forgotten to do a part of their regular job, such as forgotten to paint an area, that he called this to their attention and directed them to complete the forgotten work and they obeyed him. No evidence was presented that any of the other launch captains engaged in this conduct.

Launch Captain Tynan testified that in the 2-3/4 years he has been employed by Respondent as a launch captain he has had the authority to move crewmembers around, but testified this ''almost never happens'' because ''everyone has a job to do and they are doing their job. I don't have to redirect.'' Tynan further testified that during the 9 months he was a launch captain aboard the *Standard No. 4*, on only one occasion during that 9-month period did he have to move crewmembers around. He testified the reason why he has had to do this so rarely is because ''everyone on board [*Standard No. 4*] has a pre-assigned job duty and they do their duty.'' No evidence was presented that any of the other launch captains ''move crewmembers'' as does Tynan.

Launch Captain Chandler, who has been employed by Respondent as a launch captain for over 4 years, testified he does not have to direct the crewmen in their work because ''as many years these individuals have been on tug boat(s), if you don't know what your job is by then, you've got a problem.'' He further testified that while the crew normally did their work without direction or instruction from him that occasionally he found the wheelhouse was in need of a cleaning and ''suggested'' that the deckhand deviate from his normal work routine to clean up the wheelhouse, and testified that when the tug was berthed he would occasionally reassign employees from one housekeeping task to another. No evidence was presented that any of the other launch captains engaged in this conduct.

[10] Based on Launch Captain Chandler's testimony, presumably all of the launch captains spend about the same amount of time as Chandler in giving directions to the crewmembers because all of the crewmembers assigned to the two tugboats involved in this case are long-term experienced employees.

It is undisputed that a part of a launch captain's responsibility is to be sure that the members of the crew perform their jobs in a safe manner, in compliance with the Respondent's safety policies and the policies of the United States Coast Guard, and that when a launch captain observes a crewmember is working or acting in an unsafe manner, the launch captain will call this to the attention of the crewmember and direct him to stop doing whatever he was doing that is unsafe. It is also undisputed that safety is of great concern to all members of the crew, the unlicensed crewmembers as well as the launch captain, and that because of this, when a crewmember observes a fellow crewmember working or acting in an unsafe manner, he calls this to the other crewmember's attention.

The record establishes that Launch Captain Chandler, currently a launch captain aboard the *Standard No. 4*, about once a month, if that often, directs one of the crew to take a truck and pick up supplies for the tugboat at the Respondent's storehouse. No evidence was presented that any of the other launch captains do this.

The record establishes that if one of the unlicensed crewmembers aboard the *Standard No. 4* needs assistance to do his job, and Launch Captain Chandler is not present, that the crewman needing help goes directly to the other crewman and gets his assistance. When Launch Captain Chandler is present on board the tug, the crewman needing help will tell Chandler he needs assistance and Chandler will direct the other crewman to stop doing whatever he is doing and assist the crewmember who requested help. As an example of this, Chandler testified that when the utilityman has a problem in the engine room, which requires the assistance of others, Chandler asks the deckhand to assist the utilityman and that both Chandler and the deckhand go down into the engine room and both of them assist the utilityman. The only other evidence in the record on the subject of launch captains directing one crewmember to help another, other than the aforesaid evidence, is the testimony of Launch Captain Tynan, who, testified that during the 1 year he was employed as a launch captain aboard the *Chevron Richmond*, that it was very rare for him to move one crewmember to help another, that this occurred once a month, if that often.

It is undisputed that virtually 100 percent of the overtime worked by the crews of the *Standard No. 4* and *Chevron Richmond* is so-called ''scheduled overtime,'' which is assigned and approved by the operation coordinators, not by the launch captains. Launch Captain Tynan, who has been employed in that post by Respondent for approximately 2-3/4 years aboard both of the tugboats, testified he has never granted permission to a crewmember to work unscheduled overtime and that when a crewmember wants to work on an engine after regular hours, Tynan tells him to get permission from the office. Tynan further testified that no one from Respondent has ever informed him whether or not he has the authority to assign or approve unscheduled overtime work. Launch Captain Gill, employed in that position by Respondent aboard the *Chevron Richmond* for approximately 20 months, testified he was never informed he has the authority to assign or approve unscheduled overtime and that there has never been any unscheduled overtime worked during his watch. Finally, the record reveals that Launch Captain Chandler, currently a launch captain aboard *Standard No. 4*, has one of the tug's crewmen remain overtime for 1 or 2 extra hours for the purpose of being present when an outside contractor does engine repair work. This, however, occurs infrequently; no more than six to eight times yearly. Chandler's undenied and uncontradicted testimony is that he does not need authorization from the operation coordinators to assign and approve this unscheduled overtime work because, pursuant to Respondent's policy, it is mandatory that a crewmember remain on board the tug for safety reasons when an outside contractor is performing engine repair work.

Respondent's contention that the launch captains possess the authority to assign or responsibly direct other employees within the meaning of Section 2(11) of the Act lacks merit because the infrequent occasions on which the launch captains assign and direct other employees are of a merely routine nature and do not require the use of independent judgment, as contemplated by Section 2(11) of the Act, and because there is no evidence that all of the launch captains engage in this conduct and the ones that do, do so only on isolated and infrequent occasions.

As described in detail supra, the responsibility for assigning positions to the unlicensed crewmembers is vested in the operation coordinators, not the launch captains, and because the members of the crew are long-term, skilled employees, they perform their job assignments as utilitymen and deckhands without direction or instruction from the launch captains and the occasions when one of the six launch captains assigns or directs the work of a crewmember are so infrequent, sporadic, or isolated, that even if the issuance of the direction or assignment requires the use of the kind of independent judgment contemplated by Section 2(11), it would not establish that the launch captains possess the authority to assign or responsibly direct, as those terms are defined by Section 2(11). Moreover, I am of the view that when, on those rare occasions, one of the six launch captains assigns or directs the work of the other crewmembers, as described supra, that the launch captain is engaging in nothing more than the exercise of a routine function which does not require the exercise of his independent judgment as contemplated by Section 2(11) of the Act. For, ''[t]he responsibility of making assignments in a routine fashion does not transform an employee into a supervisor.'' *NLRB v. City Yellow Cab Co.*, 344 F.2d 575, 581 (1965). See *Highland Superstores v. NLRB*, 927 F.2d 918, 921 (6th Cir. 1991) (leadmen not supervisors because authority to assign work limited to telling employees which trucks to load and allocating time required to perform such tasks); *Williamson Piggly Wiggly v. NLRB*, 827 F.2d 1098, 1101 (6th Cir. 1987) (department manager who had discretion to direct routine activities of the department, such as unloading trucks, stocking and rotating produce, and ordering from suppliers, not supervisor); *NLRB v. Lauren Mfg. Co.*, 712 F.2d 245, 246, 248 (6th Cir. 1983) (line operators' assigning tasks to assistants on line and alternating their positions periodically not supervisory).

I have considered the evidence may warrant the conclusion that the launch captains direct crewmembers on a regular basis, rather than on an isolated or sporadic basis, in connection with their responsibility to see to it that the crewmembers act and work in a safe manner. However, the launch captains' directions issued to the crew to act and work in a safe manner do not require the use of independent judgment, but are dictated by an established safety policy.

Likewise, Launch Captain Chandler's assignment of unscheduled overtime is also dictated by established policy.[11]

In rejecting Respondent's contention that the launch captains possess the authority to assign or responsibly direct other employees within the meaning of Section 2(11) of the Act, I considered its argument that certain statements made by launch captains in evaluating other crewmembers show they direct the work of the crew. I also considered its argument that, ''the Captains clearly exercise independent judgment in operating the tugboat, which effectively directs the work that the crew must perform.''

The statements made by launch captains in the evaluations of individual crewmembers, relied on by Respondent, are three in number and are dated October 3, 1984, July 8, 1988, and July 23, 1988, and, in pertinent part, read as follows: ''[McGee is] good at following orders with none needed in the daily operation of the unit;'' ''Polk is a pleasure to work with . . . . He is willing to do any job or carry out any order with no complaint and usually very little supervision''; and ''[Lopez] needs to be more responsive to a Captain's authority and direction.'' These three isolated statements included in crewmembers' evaluations submitted to Respondent's management by the launch captains over a period of at least 7 years do not show that the launch captains possess the authority to assign or responsibly direct other employees, as those terms are defined by Section 2(11) of the Act. The fact that someone possesses the authority to assign or direct other employees in certain respects does not establish that the person with this authority is a statutory supervisor, unless the authority complies with the requirements set forth in Section 2(11) of the Act. Here, as I have found supra, Respondent failed to establish that this is the case.

Respondent's contention that the independent judgment exercised by the launch captains in navigating the tugboats show they are statutory supervisors, lacks merit because, as previously noted, the law is settled that the decisive question in the instant case is whether the launch captains possess authority to use their independent judgment with respect to the exercise of one or more of the specific authorities listed in Section 2(11) of the Act. The plain language of Section 2(11) establishes, ''it is the authority over employees, not the control of equipment, that is relevant'' in determining whether the launch captains herein possess any of the authority enumerated in Section 2(11). *McCullough Environmental Services*., 306 NLRB 565 (1992). Likewise, the fact that launch captains order supplies for the tugboats is not an indication that they are statutory supervisors because Section 2(11) of the Act defines supervisory status in terms of an individual's authority over other employees. *C & W Super Markets v. NLRB*, 581 F.2d 618, 622 (7th Cir. 1978).

[11] I also note that the responsibilities of the launch captains to record the crewmembers' hours, to verify that those hours are accurate, and to submit the hours to the Respondent's payroll department, are routine and clerical in nature and insufficient to establish supervisory status. *John N. Hansen Co*., 293 NLRB 63, 64 (1989), and cases cited therein.

5. Respondent's contention that it maintains job descriptions for the launch captains which establish their supervisory status

Since at least March 1980, Respondent has maintained a manual entitled ''Master's & Deck Officers' Manual Operating Regulations—Marine Regulation No. 400,'' hereinafter for the sake of convenience referred to as the 1980 Manual. The section of the 1980 Manual entitled, ''The Master-Responsibilities and Duties . . . Scope of Responsibility and Authority,'' in pertinent part, reads as follows:

> The Master is the direct representative of Chevron . . . . Decisions and actions taken by the Master in this capacity are usually binding upon Chevron, and therefore the Master must act to ensure that Chevron's interests are protected. Chevron representatives ashore are available at all times for consultation and to assist the Master in discharging these duties and responsibilities.
>
> The Master has supreme command of the vessel and full authority under the law over all phases of vessel operations at all times. This authority under the law extends over all persons on board.
>
> The Master is at all times responsible for the seaworthiness and safety of the ship and for the safety of all personnel, cargo and equipment aboard.

The 1980 manual in its introduction states that ''[a]ll Chevron masters and deck officers are expected to be thoroughly familiar with its entire contents and be guided by it uniformly, without exception.'' It also states that the 1980 manual is available in a pocket sized edition and each vessel operated by Respondent should have a few copies to give to new officers if they do not already have copies.

It is undisputed that the launch captains employed by Respondent on the *Standard No. 4* and *Chevron Richmond* did not receive copies of the 1980 manual until late in January 1991, 2 months after the Respondent's withdrawal of recognition and 2 months after the filing of the charge in this case, when one of the Respondent's vessel coordinators employed at the Richmond Long Wharf gave copies of the 1980 manual to the launch captains and instructed them to place the manuals aboard their tugboats. Respondent offered no explanation for its failure to make the 1980 manual available to the launch captains prior to that late date.

In 1986, Respondent's employee relations staff, in conjunction with Captain Croce, the manager of Respondent's United States ports, and in conjunction with one of Respondent's vessel coordinators employed at the Richmond Long Wharf, formulated a ''Job Summary'' for the position of ''Tug Captain, Tugboat STANDARD 2,'' to replace the previous job description for that position.[12] This ''Job Summary,'' herein referred to as the 1986 Job Summary, was approved by Captain Croce on November 6, 1986. It describes

[12] This ''Job Summary'' (R. Exh. 6) has been altered by, among other things, a line drawn through ''STANDARD 2'' and substituting ''CHEVRON RICHMOND.'' No evidence was introduced concerning the circumstance of this alteration.

the ''Functions and Objectives'' of the position of ''Tug Captain, Tugboat STANDARD 2,'' as follows:

> This position is in command of the Tugboat STANDARD 2 and is responsible for its operation and readiness. Cons the vessel and directs its crew to ensure safe, pollution-free and efficient marine operations. Responsible for all vessel maintenance.
>
> A. Ensures that STANDARD 2 is at all times seaworthy, fully manned and properly stored for efficient, economical operation.
>
> B. Ensures proper maintenance of deck and hull through assignment and follow-up of crew work. Obtains proper engine maintenance to keep vessel running with minimum downtime. Works with Docking Master and Richmond Marine Machine Shop Supervisor to develope schedules for machinery maintenance compatable with operational requirements.
>
> C. Ensures vessel stores are adequate for scheduled operations and are of appropriate quality. Originates requisitions for necessary consumable materials.
>
> D. Supervises crew of STANDARD 2. Assigns crew work and oversees crew work schedule, ensuring vessel is fully manned and personnel are qualified to perform tasks. Appraises STANDARD 2 crew and recommends personnel actions as appropriate.

There is no evidence that the launch captains were ever shown a copy of the 1986 Job Summary or informed verbally of its contents. Quite the opposite, the testimony of Daniel Tynan, Fred Modugno, and Claude Chandler, warrants the finding that the launch captains have never been informed of the 1986 Job Summary or its contents.

Tynan, employed by Respondent as a launch captain since May 1989 on both the *Chevron Richmond* and the *Standard No. 4*, testified the only instructions given to him about his job duties were verbal instructions on how to operate the tugboats and that the only thing he was ever told about his supervisory relationship to the other crewmembers was that he was informed by the other captains who trained him that he was ''in charge of making sure things are safe on the boat'' and was ''responsible to operate the boat in a safe manner,'' and further testified that no other instructions were given to him about his supervisory relationship to the other crewmembers.

Chandler, employed as a launch captain on the tugboats involved in this case since approximately 1987, testified that prior to the hearing in this case he had never seen the 1986 Job Summary.

Modugno is employed by Respondent at the Richmond Long Wharf as its area operation coordinator. He is one of the first line supervisors over the crewmembers (licensed and unlicensed) employed on the *Chevron Richmond* and *Standard No. 4*. He testified that in the 1-1/2 years he has occupied that position he has not issued either written or verbal instructions to the launch captains concerning their authority as supervisors and admitted that until the hearing in this case he was ignorant of the existence of the above-described 1986 Job Summary (R. Exh. 6). He testified he first learned of its existence when Respondent's Counsel showed him a copy during the hearing in this case. Respondent did not explain why, if the 1986 Job Summary was meant to currently apply to the launch captains employed aboard the *Chevron Richmond* and/or *Standard No. 4*, that Modugno was ignorant of its existence.

Other than the evidence that in January 1991 Respondent distributed copies of the 1980 Manual to the launch captains involved in this case, there is no evidence that Respondent ever told the launch captains—verbally or in writing—what supervisory authority over the other crewmembers they possessed or were expected to exercise. When asked by Respondent's Counsel to give the reason why the launch captains had not been told what their supervisory responsibilities were, Captain Croce, the manager of Respondent's United States ports, who is the launch captains' ultimate supervisor, was not able to give a reason (Tr. p. 445, LL. 7–10).

I reject Respondent's contention that the 1980 Manual's description of the ''masters''' duties and responsibilities, and the 1986 Job Summary for the position of tug captain for *Standard No. 2*, establishes the *Chevron Richmond*'s and *Standard No. 4*'s launch captains in November 1990 possessed some of the supervisory authority set forth in Section 2(11) of the Act. As I have indicated previously, the Board and courts have consistently refused to give weight to job descriptions that attribute supervisory authority where there is no independent evidence of its possession or exercise. See, for example, *NLRB v. Security Guard Service*, 384 F.2d 143, 149 (5th Cir. 1967) (''Theoretical or paper power will not suffice'' to show supervisory status); *North Miami Convalescent Home*, 224 NLRB 1271, 1272 (''The mere use of a title or the giving a paper authority which is not exercised does not make an employee a supervisor''). Here, while the above-described written job descriptions contain language which implies or suggests supervisory status, the Respondent, as I have found supra, failed to establish that the launch captains herein possess any one of the statutory powers set forth in Section 2(11) of the Act. In addition, the record as a whole warrants the conclusion that the description of the job duties and responsibilities of the Respondent's ''masters'' set forth in the 1980 Manual was not intended to apply to the launch captains herein and also warrants the conclusion that while the 1986 Job Summary of the duties of the tug captains employed on *Standard No. 2* may have been intended to apply to those tug captains, that it was not intended to apply to the launch captains employed on the *Standard No. 4* and *Chevron Richmond* during November 1990, when Respondent withdrew recognition from the Union.

The evidence establishes that the 1980 Manual was not intended to apply to the launch captains because it was called to their attention for the first time only after Respondent's withdrawal of recognition from the Union and after the commencement of the litigation in this case. This, despite the fact that the 1980 Manual had been in existence for over 10 years and was supposed to have been readily available during this period to all of the ''masters'' to whom it applied, and they were supposed to have been thoroughly familiar with its entire contents. Respondent did not explain why, if the 1980 Manual was intended to apply to the launch captains, the Manual was belatedly called to their attention for the first time only after the litigation had commenced in this case. In view of the foregoing circumstances, I find that the description of the job duties and responsibilities of the Respondent's ''masters'' set forth in the 1980 Manual was not intended by Respondent to apply to the launch captains herein.

Likewise, the evidence warrants the inference that the 1986 Job Summary of the duties of the tug captains employed on Respondent's *Standard No. 2* was not intended to apply to the launch captains, because the launch captains were never shown a copy of this job summary or otherwise informed of its contents. Also significant is the fact that Area Operation Coordinator Modugno, responsible for supervising the work of the launch captains, was not even aware of the existence of the 1986 Job Summary or its contents. Respondent failed to explain why, if the 1986 Job Summary was meant to apply to the launch captains, they have never been advised of its contents or shown a copy or why their immediate supervisor, Modugno, was not even aware of its existence. The foregoing circumstances, plus the failure of Respondent to present any evidence—verbal or documentary—that the 1986 Job Summary was meant to apply currently to the launch captains employed on the *Chevron Richmond* and *Standard No. 4*, warrants the inference that the 1986 Job Summary was not intended to apply to those launch captains.

6. Respondent's contention that the launch captains' job titles, their attendance at supervisory meetings, and their perception by respondent and the other crewmembers as supervisors, establishes their supervisory status

Respondent urges that the above-described secondary indicia—factors not expressly listed in Section 2(11) of the Act—show that the launch captains are statutory supervisors. However, ''secondary indicia of supervisory status . . . are in themselves not controlling. *Bay Area-Los Angeles Express*, 275 NLRB 1063, 1080 (1985), quoting *Memphis Furniture Mfg. Co*., 232 NLRB 1018, 1020 (1977). Accord: *St. Alphonsus Hospital*, 261 NLRB 620, 632 (1982). Thus, where, as here, there is no showing that the launch captains possess any of the authority set forth in Section 2(11), the several miscellaneous secondary indicia replied upon by Respondent are insufficient to support a finding of supervisory status. Moreover, a close examination of the alleged secondary indicia relied upon by Respondent reveals there is a lack of evidence that the launch captains attend supervisory meetings, and that the other alleged secondary indicia are offset by other factors.

The sole evidence that indicates that any of the launch captains may have attended meetings held exclusively for employees of Respondent who are statutory supervisors, is the testimony of Launch Captain Claude Chandler. He testified that in May 1991, he attended a 1-day labor relations seminar held in Point Wells, Washington, and attended it pursuant to instructions contained in a written memorandum dated May 3, 1991, which is captioned, ''Industrial Discipline for Supervisors as well as selected HR/O personnel.''[13] He also testified it was a companywide seminar, covering the entire West Coast of the United States, and that no unlicensed crewmembers were present and that he recognized other ''captains'' who were there. Launch Captain Chandler was not asked and did not testify whether any of these other ''captains'' whom he recognized were launch captains employed on either the *Chevron Richmond* or *Standard No. 4*. The other two launch captains who testified in this proceeding, John Gill and Daniel Tynan, testified in effect that they did not attend this seminar.[14]

In short, the record establishes that after withdrawing recognition from the Union as the launch captains' exclusive collective-bargaining representative and after the litigation in this case had commenced, Respondent sent one of its launch captains to a seminar attended by company personnel who may have been supervisors within the meaning of the Act. Respondent failed to show that prior to that time any of its launch captains had attended supervisory or managerial meetings and failed to explain the lack of such evidence. In view of the foregoing circumstances, Respondent is in no position to rely on the attendance of the launch captains at supervisory meetings to support its claim of supervisory status herein. Rather, counsel for the General Counsel, in my opinion, is in a position to urge that the lack of evidence showing that the launch captains attended supervisory meetings prior to the commencement of the litigation in this case, warrants the inference that they were not viewed by Respondent in the same light as its employees who are statutory supervisors.

However, I agree with Respondent that the record establishes some of the launch captains perceived themselves to be supervisors, as did Respondent's management, and some of the other crewmembers employed on the *Chevron Richmond* and *Standard No. 4* during the time material.[15] However, as noted previously, where, as here, there is no showing that the launch captains possess any of the authorities enumerated in Section 2(11) of the Act, secondary indicia such as job titles and the perception of supervisory status are insufficient to support a finding of supervisory status as that term is defined by Section 2(11). This is especially true in the instant case because of the following: the lack of evidence that the launch captains attend supervisory meetings;[16] the evidence that the launch captains, like the other crewmembers, are paid for their overtime work whenever they are required to work scheduled overtime; the lack of evidence that the launch captains were ever informed, expressly or by implication, that they possess any of the authorities set forth in Section 2(11) of the Act;[17] the lack of evidence that the

[13] The record does not reveal the meaning of ''HR/O personnel,'' but apparently it refers to Human Resource Office personnel.

[14] The record reveals that in the middle and/or latter part of 1991, Launch Captains Chandler and Gill attended company-sponored seminars held in San Francisco, California, and San Ramon, California, but there is no record evidence whatsoever to establish that these seminars were attended only by persons who were supervisors within the meaning of the Act, or for that matter, were attended only by persons whom the Respondent perceived to be supervisors.

[15] This finding is based on the following: the launch captains' job title; the testimony of utilityman Lopez that he regarded the launch captain as his ''boss'' and the testimony of deckhand Stevens that he regarded the launch captain as his ''superior'' because ''every place you go, if a captain is a captain he is the boss''; the testimony of Launch Captain Tynan that, ''[W]e as captains understand that we lead the crew. We provide leadership for them like a foreman''; and, lastly, on the evaluation forms which Respondent furnishes to the launch captains to appraise the work of the unlicensed crewmembers, the Respondent asks the launch captains to state ''how long have you *supervised* the employee'' and to ''indicate your attitude toward having the employee under your *command*.'' (Emphasis added.)

[16] As I have found supra, it was only after the commencement of the litigation in this case that one of the launch captains involved in this case attended a meeting which may have been attended solely by persons who are statutory supervisors.

[17] As I have found supra, the only indication in the record that the launch captains were given any kind of instruction about their job

launch captains have been held accountable or responsible for the work performance or the work product of the other crewmembers;[18] and, as found supra, when Commissioner Carpenter of the FMCS read Section 2(11) of the Act to Respondent's representatives and asked them if the launch captains exercised any of the authority set forth therein, Respondent's representatives answered in the negative. Thus, while there are factors which indicate Respondent and some of the launch captains and unlicensed crewmembers perceive the launch captains to be supervisors, there are also other factors which indicate Respondent does not perceive that the launch captains are supervisors as that term is defined in Section 2(11) of the Act.

Nor are the launch captains statutory supervisors because they are the highest ranking employees on the *Chevron Richmond* and *Standard No. 4*. The absence of statutory supervisors on the boats do not confer any greater authority upon the launch captains, particularly since the shore-based supervisors may be contacted at any time by radio or telephone. *NLRB v. Times Mirror Corp.*, 790 F.2d 1273, 1279 (5th Cir. 1986) (absence of admitted supervisors from television station does not show that workers must be supervisors, where admitted supervisors were ''available for consultation'' even though not present at station); *Tri-County Electric Cooperative*, 237 NLRB 968, 969 (1978) (jobsite line foremen were employees, even though admitted supervisor appeared at the jobsite ''as infrequently as once a month,'' because employees had a ''two-way radio to contact the admitted supervisor when 'unusual circumstances' arose''). See also *Beth Israel Medical Center*, 229 NLRB 295, 296 (1977), and *NLRB v. Monroe Tube Co*., 545 F.2d 1320 (2d Cir. 1976).

7. Ultimate conclusions as to the supervisory status of the launch captains

I conclude for the reasons set forth supra, that Respondent has failed to establish that the launch captains employed by Respondent on the *Standard No. 4* and the *Chevron Richmond* possess any of the indicia of supervisory authority enumerated in Section 2(11) of the Act. Accordingly, I find they are not supervisors within the meaning of Section 2(11) of the Act.

E. *Conclusionary Findings*

As I have found supra, Respondent operates two inland vessels on the San Francisco Bay and its tributaries which employ launch captains and, as I have also found supra, all of the launch captains employed by Respondent on inland vessels operating on San Francisco Bay and its tributaries, excluding supervisors as defined by Section 2(11) of the Act, constitute an appropriate bargaining unit.

As I have found supra, the Union is the exclusive representative of the launch captains in the aforesaid unit and was recognized as such by the Respondent. However, as I have also found, on November 27, 1990, Respondent withdrew recognition from, and refused to bargain with, the Union as the exclusive representative of the launch captains employed in the aforesaid unit. Respondent takes the position that it was privileged to withdraw recognition from, and refuse to bargain, with the Union because the launch captains are statutory supervisors.[19]

Having found, supra, that Respondent failed to establish that the launch captains employed on the *Standard No. 4* and the *Chevron Richmond* are supervisors within the meaning of Section 2(11) of the Act, I further find, in view of the circumstances set forth above, that by withdrawing recognition from, and refusing to bargain with, the Union as the exclusive representative of the launch captains in the aforesaid unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[20]

ORDER

The Respondent, Chevron U.S.A., Inc., Richmond, California, and its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain collectively with the Union as the exclusive representative of its employees in the following appropriate unit, regarding wages, rates of pay, hours of employment, and other terms and conditions of employment:

> All of the launch captains employed by Respondent on inland vessels operating in San Francisco Bay and tributaries, excluding supervisors as defined by the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the right guaranteed them by Section 7 of the Act.

---

duties and responsibilities, insofar as they relate to supervising the other crew members, occurred after the commencement of the litigation in the instant case, when they were issued copies of the 1980 Manual, which, as I have found supra, was never meant to apply to the launch captains.

[18] Although the record reveals that the launch captains' job performances are evaluated in writing, not one of those evaluations was introduced into evidence, thus there is no evidence that their evaluations include an appraisal of supervisory duties. This plus the fact that the launch captains' evaluations are done by Respondent's pilot, Captain Quan, rather than by one of the operation coordinators, warrants the inference that the launch captains are not held accountable for the performance or work product of the other crewmembers.

[19] Respondent also argues that even if the launch captains are not statutory supervisors, it was still privileged to refuse to recognize and bargain with the Union as the representative of the launch captains employed on the *Chevron Richmond* because another labor organization, the MMP, not the Union, had been the recognized bargaining representative of the launch captains employed on the *Chevron Richmond*. This argument lacks merit for the reasons set forth previously in this decision.

[20] If no exceptions are filed as provided by Sec. l02.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. l02.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the above-described appropriate unit concerning wages, rates of pay, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Post at its facility at the Richmond Long Wharf in Richmond, California, and aboard the *Chevron Richmond* and *Standard No. 4*, copies of the attached notice marked ''Appendix.''[21] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representatives, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

[21] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to recognize and bargain collectively with Sailors' Union of the Pacific, AFL–CIO as the exclusive representative of our employees in the following appropriate unit, regarding wages, rates of pay, hours of employment, and other terms and conditions of employment:

> All of our launch captains employed on inland vessels operating in San Francisco Bay and tributaries, excluding supervisors as defined by the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain collectively with the above-named labor organization as the exclusive representative of our employees in the above-described appropriate unit, regarding wages, rates of pay, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody it in a written agreement.

CHEVRON U.S.A., INC.